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15 Attorneys for the Plaintiff
16 United States Department of Labor

17 UNITED STATES DISTRICT COURT
18 FOR THE
19 NORTHERN DISTRICT OF CALIFORNIA

20 **HILDA L. SOLIS**,
21 Secretary of Labor,
22 United States Department of Labor,
23
24 Plaintiff,

25 v.

26 **CUONG VIET DO**, an individual, **THE MILI**
27 **GROUP, INC.** A California corporation, and
28 **THE MILI GROUP RETIREMENT PLAN**,
an employee benefit plan.

Defendants.

) Case No. C10-03823 LHK

) **MODIFICATION OF THE JULY 7,**
) **2011 CONSENT JUDGMENT &**
) **ORDER**

1 Plaintiff HILDA L. SOLIS, Secretary of Labor, United States Department of La-
2 bor, Employee Benefits Security Administration (“Secretary”) and Defendants Cuong
3 Viet Do, The Mili Group, Inc. and The Mili Group Retirement Plan (“Plan), an em-
4 ployee benefit plan respectfully request this Court to Modify the Consent Judgment &
5 Order that it approved on July 7, 2011 as listed below:

6
7 IT IS HEREBY **ORDERED**, **ADJUDGED**, and **DECREED** that the July 7,
8 2011 Consent Judgment and Order is fully incorporated herein by reference with the ex-
9 ception of Paragraph 5(b), which is modified as follows:

10 5(b). On the 45th day after the sale of the Florida Property, unless the Plan has
11 been terminated and the Pension Benefit Guaranty Corporation (“PBGC”) appointed
12 trustee of the Plan, Jeanne Bryant, Receivership Management Inc., 783 Old Hickory
13 Blvd., Suite 255, Brentwood, TN 37027, shall be appointed as the Successor Independ-
14 ent Fiduciary to the Plan. The termination of the Plan and the appointment of the PBGC
15 as the trustee of the Plan may occur by a written agreement between the PBGC and the
16 Initial Independent Fiduciary without the need for a further order from this Court. Prior
17 to the sale of the Florida Property and until the transfer of Plan assets described in Para-
18 graph 5(a)(1), the Successor Independent Fiduciary shall have no fiduciary responsibili-
19 ties. If the Plan is terminated and PBGC is appointed as trustee of the Plan prior to the
20 transfer of the Plan assets described in Paragraph 5(a)(1) then the Successor Independent
21 Fiduciary shall have not be appointed and shall have no fiduciary responsibilities. Im-
22 mediately upon receipt of the transferred Plan assets pursuant to Paragraph 5(a)(1), the
23 Successor Independent Fiduciary shall have the following duties and responsibilities:

24 (1). The Successor Independent Fiduciary shall have the discretionary authority
25 to collect, marshal, pay out and administer all of the assets of the Plan, and to take fur-
26 ther action with respect to the Plan as appropriate, including termination of the Plan
27 when all of the assets have been distributed to all eligible Plan participants and benefici-
28 aries;

1 a. The eligible Plan participants and beneficiaries entitled to alloca-
2 tions/distributions pursuant to the governing Plan Documents and the Consent Judgment
3 & Order are identified on Exhibit A attached to the May 27, 2011 Consent Judgment &
4 Order; and

5 b. In allocating any benefits due under the Plan and this Consent Judg-
6 ment & Order, the Successor Independent Fiduciary shall, pursuant to Article 3, section
7 2.3.1(e) of the Plan Document, adjust any amounts due to Minha Do by recognizing that
8 she obtained a \$50,000 distribution from the Plan in July of 2007.

9 (2). The Successor Independent Fiduciary shall, pursuant to the procedures out-
10 lined in the Employee Benefits Security Administration's Field Assistance Bulletin
11 2004-02, exercise reasonable care and diligence to identify and locate each participant
12 and beneficiary of the Plan who is eligible to receive a distribution under the terms of the
13 Plan;

14 (3). The Successor Independent Fiduciary shall have all the rights, duties, dis-
15 cretion, and responsibilities of a trustee, fiduciary, and Plan Administrator under ERISA;

16 (4). The Successor Independent Fiduciary is authorized to delegate or assign fi-
17 duciary duties as appropriate and allowed under the law and may retain such as assis-
18 tance as he may require, including attorneys, accountants, actuaries, and other service
19 providers;

20 (5). The Successor Independent Fiduciary shall have full access to all data, in-
21 formation, and calculations in the possession of the respective Plans and under their con-
22 trol, including information and records maintained by the custodial trustees or service
23 providers of the Plan;

24 (6). The Successor Independent Fiduciary is authorized to give instructions re-
25 specting the disposition of assets of the Plan;

26 (7). The Successor Independent Fiduciary shall comply with all applicable rules
27 and laws;
28

1 (8) The Successor Independent Fiduciary shall be bonded as required by
2 ERISA § 412, 29 U.S.C. § 1112.

3 (9). Pursuant to Article 2, Section 3.2.7 of the governing Plan document, the
4 Successor Independent Fiduciary's reasonable expenses and fees may be charged against
5 the assets of the Plan;

6 (10). Following appointment, the Successor Independent Fiduciary shall be re-
7 quired to present to the Court and the Secretary an itemized application for the payment
8 of fees and expenses on a quarterly basis (except that, if all the proceeds from the sale of
9 the Florida Property have been distributed and there are no assets in the Plan, the Suc-
10 cessor Independent Fiduciary may submit this application on an annual basis, until the
11 commencement of the payment plan under paragraph 6 (b) of the May 27, 2011 Consent
12 Judgment & Order). The Fee Application shall include the hourly rates of pay, dates
13 and hours of work, a description of work performed, and an itemized statement of ex-
14 penses. The Secretary requests that the Fee Application shall be deemed approved,
15 unless the Secretary specifically objects to the Fee Application within fifteen business
16 days. In the event the Secretary objects to the Fee Application, the Secretary requests
17 that the Court decide whether the Independent Fiduciary's application should be granted.
18

19 The Court directs the entry of this Modification to the July 7, 2011 Consent
20 Judgment & Order as a final order.

21
22
23 Dated: November 23, 2011


Lucy H. Koh,
United States District Judge

1 Entry of this Modification of the July 7, 2011 Consent Judgment & Order is hereby
2 consented to:

3 Dated: 8/30/11

M. PATRICIA SMITH
Solicitor of Labor

5 LAWRENCE BREWSTER
6 Regional Solicitor

7 DANIEL J. CHASEK
8 Associate Regional Solicitor

9 DANIELLE L. JABERG
10 Counsel for ERISA

11 By: 
12 BORIS ORLOV
13 Trial Attorney

14 Attorneys for HILDA L. SOLIS, Secretary of
15 Labor,
16 United States Department of Labor

17
18 Dated: _____

LARS T. FULLER, FULLER LAW FIRM
Attorneys for Defendants, Cuong Viet Do and
The Mili Group, Inc.

21 Dated: _____

22 CUONG VIET DO

23 Dated: _____

24 THE MILI GROUP, INC.
25 CUONG VIET DO, President

26 Dated: _____

27 THE MILI GROUP RETIREMENT PLAN
28 MICHAEL FITZGIBBONS, Initial Independent
Fiduciary

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M. PATRICIA SMITH
Solicitor of Labor

5 LAWRENCE BREWSTER
6 Regional Solicitor

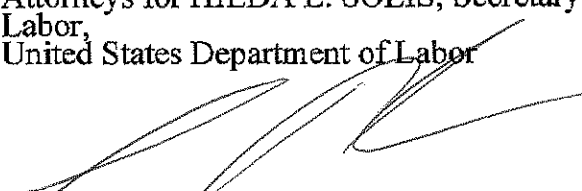
7 DANIEL J. CHASEK
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9 DANIELLE L. JABERG
10 Counsel for ERISA

11 By: _____
12 BORIS ORLOV
13 Trial Attorney

14 Attorneys for HILDA L. SOLIS, Secretary of
15 Labor,
16 United States Department of Labor

17 Dated: 8/30/2011


18 LARS T. FULLER, FULLER LAW FIRM
19 Attorneys for Defendants, Cuong Viet Do and
20 The Mili Group, Inc.

21 Dated: 8/29/2011


22 CUONG VIET DO

23 Dated: 8/29/2011


24 THE MILI GROUP, INC.
25 CUONG VIET DO, President

26 Dated: _____

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28 MICHAEL FITZGIBBONS, Initial Independent
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15 Labor,
16 United States Department of Labor

17
18 Dated: _____

LARS T. FULLER, FULLER LAW FIRM
Attorneys for Defendants, Cuong Viet Do and
The Mili Group, Inc.

21 Dated: _____

22 CUONG VIET DO

23 Dated: _____

24 THE MILI GROUP, INC.
25 CUONG VIET DO, President

26 Dated: 8.26.11


27 THE MILI GROUP RETIREMENT PLAN
28 MICHAEL FITZGIBBONS, Initial Independent
Fiduciary